

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JASMINE MONTGOMERY,
Plaintiff,

v.

GRETCHEN BATAILLE, et al.,
Defendants.

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Civil Action No. 4:10-CV-00073-MHS-ALM

JURY

DEFENDANT POLK'S MOTION TO COMPEL DISCOVERY

Defendant Jeremy Polk (Defendant) moves to compel Plaintiff Jasmine Montgomery (Plaintiff) to provide discovery required by this court's local rules. In support of this motion, Defendant offers the following:

On October 19, 2011, the court issued an amended scheduling order, which sets December 30, 2011 as the discovery deadline in this case. D.E. 62. Two days later, undersigned counsel sent a letter via facsimile and certified mail to Plaintiff's counsel requesting executed releases required by Local Rule CV-34. See Attachment A, pp. 1-3. Although Plaintiff's counsel received the letter on October 24, 2011, she did not respond or provide the requested releases.

On November 1, 2011, undersigned counsel e-mailed Plaintiff's counsel, asking whether she had received the October 21, 2011 letter. Id. at 4. The e-mail stressed that Local Rule CV-34 required disclosure of records related to Plaintiff's damages or executed releases so that the relevant records can be obtained. Id. Moreover, without the records, Defendant is unable to take Plaintiff's deposition and properly defend against Plaintiff's claims. For example, undersigned counsel cannot adequately question Plaintiff regarding the extent of her alleged injuries without the records of any treatment needed or received. Also, without the records, undersigned counsel is unable to determine whether Defendant will need medical, dental, mental health or economic experts to rebut Plaintiff's

alleged damages.

Undersigned counsel did not hear from Plaintiff's counsel until November 10, 2011. On that day, Plaintiff's counsel sent an e-mail response, asking that the releases (which had already been sent numerous times) be forwarded to her so that they could be executed. Att. A, p. 7. On November 14, 2011, the releases were sent a fourth time to Plaintiff's counsel. Id. at 9.

Having not received a response, undersigned counsel again e-mailed Plaintiff's counsel on November 17, 2011, inquiring whether or not the releases had been received and/or executed. Id. at 10. The next day, Plaintiff's counsel responded and verified that she had received the releases, but objected to the HIPAA release because it is broad and requests information that is not relevant to the facts at issue. Id. at 11. Undersigned counsel responded that the HIPAA release is not addressed to specific providers because the release will be used to obtain Plaintiff's records from numerous providers, e.g. Denton County Jail and Plaintiff's dentist. Id. at 12. Furthermore, the release is not addressed to a specific provider because Plaintiff has failed to provide a list of medical, dental, and/or mental health providers that have treated her as a result of her alleged injuries. Plaintiff's counsel did not respond or provide the required releases.

Yesterday, November 30, 2011, undersigned counsel again inquired about the status of the releases. Id. at 13. Because over a month has passed since undersigned counsel first requested the releases required under Local Rule CV-34 and Plaintiff has failed to disclose the necessary records or releases, Defendant asks the court to issue an order compelling Plaintiff to execute the releases necessary to obtain all records related to her alleged damages. In addition, since the discovery deadline is currently set as December 30, 2011, Defendant requests that the court extend the discovery deadline by at least 60 days following the receipt of the releases and/or records so that

Defendant may serve the releases, order copies of the relevant records, determine whether rebuttal experts are necessary, and conduct the necessary depositions.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

DAVID C. MATTAX
Director of Defense Litigation

DAVID A. TALBOT, JR.
Law Enforcement Defense Division Chief

/s/ SHANNA ELIZABETH MOLINARE
SHANNA ELIZABETH MOLINARE
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Attorneys for Defendant Polk

CERTIFICATE OF CONFERENCE

I, SHANNA ELIZABETH MOLINARE, Assistant Attorney General of Texas, do hereby certify that, on November 30, 2011, I e-mailed Plaintiff's counsel regarding the substance of this motion; and at the time of this motion's filing, I have received no response from Plaintiff's counsel.

/s/ SHANNA ELIZABETH MOLINARE
SHANNA ELIZABETH MOLINARE
Assistant Attorney General

NOTICE OF ELECTRONIC FILING

I, **SHANNA ELIZABETH MOLINARE**, Assistant General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing **Defendant Polk's Motion to Compel Discovery** in accordance with the Electronic Case Files System of the Eastern District of Texas, on December 1, 2011.

/s/ SHANNA ELIZABETH MOLINARE
SHANNA ELIZABETH MOLINARE
Assistant Attorney General

CERTIFICATE OF SERVICE

I, SHANNA ELIZABETH MOLINARE, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Defendant Polk's Motion to Compel Discovery** has been served upon all counsel of record via electronic filing notification on December 1, 2011. In addition, a courtesy copy of this motion has been sent via the United States Postal Service, certified mail, return receipt requested, to:

Sonya Chandler-Anderson
Law Office of Sonya Chandler-Anderson
1406 Southmore Blvd.
Houston, TX 77004
Attorney for Plaintiff

Via CM/RRR 7004 2510 0004 1674 7347

/s/ SHANNA ELIZABETH MOLINARE
SHANNA ELIZABETH MOLINARE
Assistant Attorney General